

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2012050894
v.	
SWEETWATER UNION HIGH SCHOOL DISTRICT,	
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SWEETWATER UNION HIGH SCHOOL DISTRICT,	OAH CASE NO. 2012101142
v.	ORDER DENYING DISTRICT'S MOTION TO CONSOLIDATE
PARENT ON BEHALF OF STUDENT.	

On May 18, 2012, Student filed with the Office of Administrative Hearings (OAH) a request for due process hearing, OAH case number 2012050894 (First Case), naming the Sweetwater Union High School District (District). On July 24, 2012, Student filed a third amended due process request as permitted by OAH order, alleging that Student was denied a FAPE for the 2010-2011 and 2011-2012 school years.

On September 10, 2012, Student and District filed a joint request for continuance to mutually agreed upon dates. The prehearing conference (PHC) in the First Case is set for November 5, 2012, and the hearing is scheduled for November 13-15, 26-27, 2012.

On October 31, 2012, District filed a due process hearing request, OAH case number 2012101142, naming Student, and alleging that it provided Student a FAPE during the 2011-2012 school year. The PHC in the Second Case is scheduled for November 19, 2012, and the hearing is scheduled to begin on November 29, 2012.

On October 31, 2012, District filed a motion to consolidate these cases on the grounds that they involve common questions of fact and law, and that consolidation will eliminate the possibility of inconsistent decisions. District also requested that the dates set in the First Case be vacated.

On November 2, 2012, Student filed opposition contending that (i) District waived the right to raise the "affirmative defense" of Student's graduation in 2012 by failing to respond

to his amended due process request, and improperly seeks to raise this defense by filing its own case and seeking consolidation, and that (ii) consolidation will result in delay.

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Here, Student's complaint alleges that District failed to identify and address Student's academic, social/emotional, functional, behavioral, mental health and transition service needs in 2010-2011 and 2011-2012, thereby denying Student a FAPE for those academic years. District's complaint seeks a finding that Student was provided a FAPE during the 2011-2012 school year, which is an issue already raised in Student's case. These matters clearly involve common questions of law and fact, but District provides no explanation for seeking to vacate the agreed upon dates in the First Case where the witnesses, documentary evidence and argument concerning the 2011-2012 school year are already scheduled for presentation. Consolidation does not further the interests of judicial economy where it results in a needless delay in hearing issues that have been in dispute and clarified since no later than July 24, 2012, and the First Case has been pending since May 2012. By their joint request for the five agreed upon dates for hearing in the First Case, counsel for both parties represented their readiness to proceed on the issues raised in Student's complaint, which includes whether or not District provided a FAPE to Student for the 2011-2012 school year.

A due process hearing under the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq.)(IDEA) is not a civil case, and the IDEA does not impose a duty on respondents to file an answer or otherwise respond to a due process hearing request. Therefore, District did not waive any defenses to Student's claims by not filing a response, and consolidation is not necessary for District to raise these issues at the hearing on the First Case.

The possibility of inconsistent rulings will be minimized by the res judicata effect of the first published decision. If, after this order, District chooses to seek consolidation without a continuance of the agreed upon hearing dates, it should be prepared to raise and discuss this issue with the hearing ALJ during the PHC on November 5, 2012.

Accordingly, consolidation is denied.

IT IS SO ORDERED.

Dated: November 05, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings